

FILED

August 12 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No. DA-10-0226

PARK PLACE APARTMENTS, L.L.C.,
Plaintiff/Appellant

v.

FARMERS UNION MUTUAL INSURANCE COMPANY AND
WILLIAM F. WILHELM
Defendants/Appellees

FILED

AUG 12 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

**APPELLANT'S OBJECTION TO MONTANA FARMERS UNION
INSURANCE, INC., MOTION FOR EXTENSION OF TIME TO FILE
RESPONSE BRIEF**

Terry N. Trieweiler
Attorney at Law
P.O. Box 5509
Whitefish, MT 59937
(406) 862-4597, (406) 862-4685 fax
Attorney for Plaintiff/Appellant, Park Place Apartments, L.L.C.

William J. Gregoire/Steven J. Fitzpatrick
Attorneys at Law
PO Box 2227
Great Falls, MT 59403-2227
(406) 727-4100, (406) 727-9228 Fax
Attorneys for Defendant/Appellee and Third Party Plaintiff William F. Wilhelm

Douglas J. Wold
Attorney at Law
PO Box 400
Polson, MT 59860-0400
(406) 883-3271, (406) 883-3271 Fax
Attorney for Defendant/Appellee Farmers Union Mutual Insurance Company

James R. Halverson/Katherine S. Huso
Attorneys at Law
PO Box 80470
Billings, MT 59108-0470
(406) 652-1011, (406) 652-8102 Fax

Attorney for Defendant Montana Farmers Union Insurance Agency, Inc.

Guy W. Rogers/Matthew I. Tourtlotte
Attorneys at Law
PO Drawer 849
Billings, MT 59103-0849
(406) 248-2611, (406) 248-3128 Fax

Attorneys for Third-Party Defendant, Whitefish Insurance Agency, Inc.

The Appellant, Park Place Apartments, L.L.C., objects to the motion filed by Montana Farmers Union Insurance Agency, Inc., (MFUIAI) for an extension of time in which to file a response brief for two reasons:

1) MFUIAI is not a party to this appeal. It was named as a party to the action filed in the district court because it is responsible as the principal for the defendant William Wilhelm. William Wilhelm was dismissed by summary judgment. MFUIAI's motion to dismiss has not been decided. However, since its liability is predicated on Wilhelm's and since Wilhelm is capably represented on appeal, the entire case was certified for appeal pursuant to Rule 54(b) M.R.Civ.P. There is, however, no basis for MFUIAI to appear in this case, other than through Wilhelm. Its interests have never been decided by the district court and there is no final judgment to which it is a party. (*Robinson v. Mayo, et al.*, 849 A.2d 351, 356 (R.I. 2004) (refusing to entertain codefendant's brief on appeal when the Rule 54(b) judgment at issue did not involve him - - "Mayo is not a proper party to the present appeal").) If MFUIAI feels the briefing already being done by Farmers Union Mutual Insurance Company and Wilhelm will be inadequate even though it covers the exact same issues that would be briefed by MFUIAI, it should move the court as did the Montana Trial Lawyers Association for leave to file an *amicus* brief.

2) While Rule 26(1) provides for fairly liberal treatment of a party's first motion for extension of the time within which to file its brief, the rule still requires

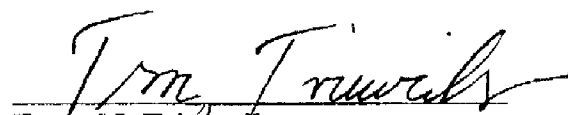
"good cause" which hasn't been shown in these circumstances. Therefore, the 30-day requirement should be enforced or the time requirement should simply be changed to 60 days.

Finally, an extension for either of the two defendants who have currently sought them creates uncertainty about when the Appellant's reply brief is due. Farmers Union Mutual Insurance Company has filed its brief when due on August 11, 2010. The Appellant assumes that only one reply brief is allowed. If all of the defendants are filing briefs on different dates, then the Appellant would appreciate some guidance about whether one reply brief is permitted or a reply brief to each defendant and if only one reply brief is permitted, then on what date it is due.

The rules do not address these issues.

DATED this 11 of August, 2010.

TRIEWEILER LAW FIRM


Terry N. Trieweller

CERTIFICATE OF SERVICE


This is to certify that on the _____ day of August, 2010, a true and exact copy of the foregoing document was served on the Appellees by mailing a copy, postage pre-paid to:

William J. Gregoire/Steven J. Fitzpatrick
Attorney at Law
PO Box 2227
Great Falls, MT 59403-2227

Douglas J. Wold
Attorney at Law
PO Box 400
Polson, MT 59860-0400

James R. Halverson/Katherine S. Huso
Attorneys at Law
PO Box 80470
Billings, MT 59108-0470

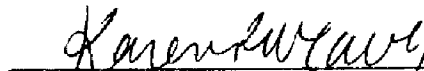
Guy W. Rogers/Matthew I. Tourtlotte
Attorneys at Law
PO Drawer 849
Billings, MT 59103-0849


Karen R. Weaver

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that the Appellant's Motion is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced; and the word count calculated by Microsoft Office Word 2003, is 403 words, including all text, excluding table of contents, table of citations, certificate of service and certificate of compliance.

Dated this _____ day of August, 2010.


Karen R. Weaver